No. 03-1687

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

BRODERICK JONES,

Petitioner,

-against-

REGINALD WILEY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF THE CITY OF NEW YORK AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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The *amicus curiae* City of New York respectfully submits this brief in support of the petition for certiorari.

STATEMENT OF INTEREST

Pursuant to Rule 37(4), this *amicus curiae* brief is presented on behalf of the City of New York.

This case brings to the forefront a critically important issue for the City of New York (the "City"); namely, the point at which a false arrest claim accrues under 42 U.S.C. §1983 for statute of limitation purposes. Ever since this Court's holding in Heck v. Humphrey, 512 U.S. 477 (1994) ("Heck"), circuit courts across the country have issued conflicting interpretations regarding when a Fourth Amendment false arrest claim accrues. Since there are currently approximately 631 false arrest claims pending against the City in federal court, and the City regularly defends hundreds of false arrest claims every year, the issue raised in the underlying case is of fundamental importance to the City and other similarly situated municipalities throughout the country.

Like the Seventh Circuit in the case at bar, the Second Circuit has erroneously applied the Heck holding to cases which will never result in a conviction or judgment, wrongly concluding that the statute of limitations on a false arrest cause of action under §1983 begins to run only after the criminal prosecution has been dismissed or otherwise invalidated or reversed. See Covington v. The City of New York, 171 F.3d 117, cert. den., 528 U.S. 946 (1999). Other circuits, however, have reached earlier accrual dates. This has resulted in a sharp division amongst the circuits in an area where there should be conformity and consistency. Accordingly, these divergent decisions call for the exercise of this Court's plenary review.

SUMMARY OF ARGUMENT

Certiorari should be granted because the Seventh Circuit's holding contravenes the long-respected rule that false arrest claims accrue upon arrest, and directly conflicts with numerous rulings by other Circuit Courts that address Heck but also follow the accepted rule that false arrest claims accrue upon arrest. Those decisions correctly recognize that success on a false arrest claim would not necessarily undermine the validity of a criminal conviction or sentence arising from the same general factual circumstances, in view of the myriad of other sources of evidence that might be used to obtain a conviction in addition to that evidence, if any, seized or otherwise obtained at the time of an arrest. Eg. Brooks v. City of Winston-Salem, 85 F.3d 178 (4th Cir. 1996) (Heck does not alter general rule that §1983 claim seeking damages for unlawful arrest accrues when plaintiff knows of injury); Mackey v. Dickson, 47 F.3d 744, 746 (5th Cir. 1995) ("It is well established that a claim of unlawful arrest, standing alone, does not necessarily implicate the validity of a criminal prosecution following the arrest").

The City maintains that, as a matter of law, a false arrest claim, standing alone, which is asserted in an action brought under 42 U.S.C. §1983, can never be found to inevitably impugn the validity of a conviction or sentence, a finding required in Heck before holding that the accrual of a cause of action does not occur until after favorable disposition of the underlying criminal action.

REASONS FOR GRANTING THE WRIT

I. THE PETITION SHOULD BE GRANTED TO CLARIFY THE IMPACT, IF ANY, OF HECK V. HUMPHREY, 512 U.S. 477 (1994), ON THE ACCRUAL DATE OF FALSE ARREST CLAIMS BROUGHT UNDER 42 U.S.C. §1983.

This case involves a critically important issue in the administration of justice in the federal courts that frequently arises in cases brought under §1983: when a false arrest claim accrues. The threshold determination of accrual is of fundamental importance in deciding whether the claim is timely under the relevant statutes of limitations, which protect against stale claims.

The Seventh Circuit's holding herein is not reconcilable with the essential nature of false arrest claims. It is well recognized that a claim accrues when a person knows that he or she has been wronged. Chardon v. Fernandez, 454 U.S. 6, 8 (1981) (per curiam); Delaware State College v. Ricks, 449 U.S. 250, 258 (1980). The Seventh Circuit's determination that plaintiff's false arrest claim did not accrue until after the dismissal of the criminal prosecution fails to recognize the fact--critical for analysis of the accrual issue--that plaintiff knew that he had been wronged by a false arrest, if indeed he was, at the time of the arrest. No sound reason has been presented why it should not, therefore, be found that his cause of action for false arrest accrued at that time.

In the case of a claim of false arrest, or an arrest without probable cause, all relevant facts are known to or may be discovered by the arrestee, as well as the arrestor, at the time of the arrest. The damages that may be sought cover only the time of detention up until the issuance of process or arraignment. Heck, 512 U.S. at 484. Further, there is no bar to a civil suit based upon a claim of false arrest, although, if advisable, such suit could be stayed

pending determination of the issue of probably cause in the related criminal proceedings, if any were instituted.

In the case of a civil rights claim in the nature of malicious prosecution, in contrast, while the fact of the initiation of an action is known when an indictment or complaint is filed, other critical elements of the cause of action, including a favorable termination, cannot be known until later. Moreover, the full amount of damages that may be recovered, including those for any arrest or imprisonment, discomfort or injury to health, loss of time, deprivation of society or loss of reputation, also cannot be known until the dismissal of the criminal charges. See Heck, 512 U.S. at 484. Prosecution of a civil rights claim in the nature of malicious prosecution is, therefore, neither possible nor practicable until the termination of the underlying proceeding.

This Court held in Heck that the §1983 claim at issue there, in which the criminally convicted plaintiff whose conviction was on appeal, alleged an improper investigation leading to his arrest, destruction of exculpatory evidence and use of an improper voice identification procedure at trial, was closest in nature to a common law claim of malicious prosecution. 512 U.S. at 484. Such action, this Court properly reasoned, "provides the closest analogy...because, unlike the related cause of action for false arrest or imprisonment, it permits damages for confinement imposed pursuant to legal process." Id.

Here, in holding that the plaintiff's Fourth Amendment claim could not accrue until the date criminal charges against him were dropped, the Seventh Circuit improperly failed to distinguish between plaintiff's bare false arrest claim, which had the potential for being litigated without necessarily impacting on or conflicting with his criminal case, and a case in the nature of malicious prosecution. The latter, unlike the former, necessarily attacks the conviction itself, and thus could never be independently

conducted without running a risk of direct conflict in the results achieved in the civil and criminal arenas.

II. THE RULE SET FORTH IN HECK V. HUMPHREY, 512 U.S. 477 (1994), DOES NOT APPLY TO SITUATIONS INVOLVING A MERE POSSIBILITY OF FUTURE CONVICTION.

In the absence of an actual conviction or sentence, it is difficult, at best, to determine definitively whether actions challenged in a §1983 claim would have been material to a conviction. Moreover, most plaintiffs, in the absence of a conviction, would have an unencumbered opportunity to commence an action.

Many circuits, including the Seventh and Second, have utterly failed to address the stunning impracticability of the task to determine whether success of a false arrest claim would necessarily impugn the validity of a related conviction, where the conviction at issue was not only potential rather than actual, but also where it would never ultimately be obtained. In any case where criminal charges have been dismissed prior to trial--not an uncommon scenario--one could never know whether a conviction might not have been obtained based upon evidence that the prosecution acquired independently of the alleged false arrest. Even if constitutionally admissible incriminating evidence still were not available at the time of dismissal of the charges, it might later have been obtained through a myriad of circumstances that could never be predicted with reasonable accuracy. The question whether the validity of a conviction or sentence would necessarily be impugned by success on a false arrest claim thus could never conclusively be answered in a case where the criminal charges had been dismissed without a trial.

This precise dilemma led the Second Circuit, in Covington, to remand the case to the District Court for a factual inquiry into whether success on plaintiff's false

arrest claim would necessarily have impugned the validity of a conviction that might have been obtained, but never will be. The practical difficulties the City now faces in light of that holding are enormous. It places an intolerable burden both on the City as well as the district courts to recreate with some reasonable accuracy the circumstances surrounding a significantly aged arrest and prosecution. It also requires the District Court to speculate in that endeavor, about what evidence the State might have discovered and presented in addition to that recovered upon the arrest.[1] It is virtually impossible to definitively establish whether the success of a false arrest claim would necessarily impugn the validity of a related conviction—particularly where the conviction at issue was not only potential rather than actual, but would never ultimately be obtained. Simply put, the conclusion Judge Glasser reached in his well reasoned dissent in Covington has come

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[1] Previously, the District Courts in the Second Circuit have followed the rule that a claim under §1983 in the nature of false arrest accrues at the time of the arrest. E.g., Covington v. City of New York, 916 F.Supp. 282, 285-286 (S.D.N.Y. 1996). Following the decision of the Second Circuit, however, one District Court in the Second Circuit recently held that "the only feasible rule, following Covington, is that a false arrest claim accrues at the termination of the prosecution (or at the time of arrest if no prosecution is pursued), even though a favorable termination is not an element of the claim. Any other rule would require the civil plaintiff to predict whether the evidence used to prosecute him will extend beyond that evidence which caused his arrest, in order to determine when his false arrest claim accrues." Pichardo v. New York City Police Dept., 98 Civ. 429 (S.D.N.Y.) (DLC), unreported order, May 10, 1999, vacating the prior dismissal of the false arrest claim as untimely. Pichardo v. New York City Police Dept., 1998 U.S. Dist. LEXIS 18025 (S.D.N.Y. 1998).

to pass. Specifically, holdings such as the one at bar have "place[d] upon the district court an impossible and totally unrealistic burden." Covington v. City of New York, 171 F.3d 117, 128 (2nd Cir. 1999).

In sum, for the reasons set forth herein and within the City of Chicago's Petition for a Writ of Certiorari, this Court should grant the City of Chicago's petition to clarify the application of Heck in cases where no conviction has ever been, or ever will be, obtained. As illustrated by multiplying the 631 false arrest claims pending against the City in federal court this year annually, the sheer burden of implementing Heck is alone reason for the Court to address this issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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